automobile was not alleged to be in the defendant. The trust was imposed upon the contract of purchase and not upon the automobile. A constructive trust is impressed upon a lease secured in fraud of a prior lessee. *Luse* v. *Rankin,* 57 Neb. 632, 78 N. W. 258; *Mitchell* v. *Reed,* 61 N. Y. 123. In the principal case the contract was not obtained by fraud, but the interest of defendant in the contract was purchased with the money taken from plaintiff through fraud. That interest was the subject of this constructive trust. See *Reynolds* v. *Aena Life Insurance* Co., 160 N. Y. 635, 55 N. E. 305, where a judgment debtor was declared a trustee of life endowment policies, the premiums of which had been paid up in fraud of a receiver. The transactions and subject matters to which the equitable remedy of impressing a constructive trust will be applied to avoid fraud are numerous and varied. *Barnes* v. *Thuet Brothers,* 116 Iowa 359, 89 N. W. 1085.

EVIDENCE.—CONFESSION INDUCED BY VIOLENCE ADMINISTERED TO ANOTHER.—Defendant was indicted for aiding and abetting two others in the commission of a crime. One of the others confessed after having been subjected to physical violence, and subsequently defendant also confessed. After his confession had been put in evidence, defendant offered to show that at the time he confessed he knew that such force and violence had been used toward his co-defendant. *Held* that the evidence as to the circumstances of the confession should have been admitted. *People* v. *Taranto,* (N. Y. 1916), 111 N. E. 753.

The rule has been variously expressed that to be admissible a confession must have been voluntarily made and not induced either by promise or threat. WIGMORE, § § 825, 826. A more accurate statement of the rule, having regard for the basis of exclusion of confessions, is expressed as follows: "Was the inducement such that there was any fair risk of a false confession?" WIGMORE, §824. The rule is often expressed in a statute as it is in New York, Code Crim. Pro. §395. By construction, the rule therein expressed is the same as that given above. *People* v. *White,* 176 N. Y. 331; *People* v. *Rogers,* 192 N. Y. 331. Obviously, each case must be decided upon its own facts, but some help may often be obtained from adjudicated cases. The question has been presented in at least three cases as to whether or not a confession made after seeing corporal violence done to a co-defendant to compel a confession would render the confession inadmissible. *State* v. *Lawson,* 61 N. C. 47; *Brister* v. *State,* 26 Ala. 107; *Frank* v. *State,* 39 Miss 705. In *State* v. *Lawson* and *Brister* v. *State, supra,* evidence of the circumstances surrounding the making of the confession was not only admitted but it was held that this evidence was sufficient to render the confession inadmissible. In *Frank* v. *State* supra the confession was held to be admissible, but the court said, "What was the particular cause of the whipping of the other slave, or whether it was because he was charged or suspected of a participation in the offense charged against the prisoner does not appear. For aught that appears, it might have been for resistance or other unlawful conduct of the slave. But it does not appear that it was done for the purpose of obtaining confessions from him, or that it was on account of the very same offense

charged against the prisoner in this case." This case, therefore, is not in conflict with the two former cases. If, in the instant case, the defendant had been present when the violence was done to the co-defendant, this case would be similar to the cases of *State* v. *Lawson* and *Brister* v. *State* supra. But all that could be gained by being present is knowledge. This he has gained in some other way. It is immaterial how he got it. And the fact that he had such knowledge at the time when he made his confession under circumstances similar to those under which his co-defendant confessed was relevant and material in determining whether or not there was such an inducement that there was a fair risk of a false confession.

EVIDENCE.—PHYSICAL EXAMINATION OF PROSECUTING WITNESS.—Defendant was indicted for rape. When the case was called for trial he demanded a physical examination of the prosecutrix by a competent physician. The demand was denied by the court and exception allowed. *Held*: "In view of the unsatisfactory character of the testimony of the child witness and the fact that there is a direct conflict in her testimony and that of the only other witness produced by the state, we think that the court erred in refusing the defendant's demand that a physical examination of the child be made by a competent physician." *Walker* v. *State,* (Okla. 1915), 153 Pac. 209.

In some instances, the right of the court to compel a party in a civil case to submit to a physical examination has always been recognized. WIGMORE, § 2220. The decisions are in hopeless conflict, however, where that party is party plaintiff in a personal injury case, but the weight of authority would seem to recognize the existence of the inherent right here also. For a full discussion and review of the cases on this point see 1 MICH. LAW REV. 193, 277. The matter is regulated in some instances by statutory provisions. New York Code Civ. Pro. § 873. There are few cases wherein the courts have passed upon the right to compel a physical examination of the prosecuting witness. In cases of criminal slander, there is a tendency to refuse to order such an examination, *McArthur* v. *State,* 59 Ark. 431, 27 S. W. 628; *Bowers* v. *State,* 45 Tex. Cr. Rep. 185, 75 S. W. 299, and *Whitehead* v. *State,* 39 Tex. Cr. Rep. 89, 45 S. W. 10, (dictum); though these cases seem to be decided upon their particular facts, and the courts do not say that no inherent right to make such an order exists where the occasion demands it. In *King* v. *State,* 100 Ala. 85, 14 So. 878, a prosecution for an assault with a pistol, the court held that it was error to refuse to compel the prosecutrix to exhibit her arm to the jury, whereas in *Goodwin* v. *State,* 114 Wis. 318, 90 N. W. 170, also a prosecution for assault with intent to kill, the court held that there was no error in refusing to order a physical examination of the prosecutrix to determine whether or not she was afflicted with hysteria. These cases are not in conflict. Of the cases similar in nature to the instant case, *State* v. *Pucca,* 4 Pennewill (Del). 71, 55 Atl. 831 is in accord as is the *dictum* in *People* v. *Preston,* 19 Cal. App. 675, 127 Pac. 660. In *McGuff* v. *State,* 88 Ala. 147, 7 So. 35, 16 Am. St. Rep. 25, the decision of the lower court refusing to compel a physical examination of the prosecutrix by a committee of competent physicians at the request of the defendant was affirmed. In the course